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No. 99-338

IN THE
Supreme Court of the United States

JOHN BURTON AND FELIX BURTON,
Petitioners,

v.

NICOLAS CHARLES, CHARITE ASSEIGNE, MIGUEL AUBOUT, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF *AMICUS CURIAE* OF THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS IN SUPPORT OF PETITIONERS

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BRIEF *AMICUS CURIAE* OF THE NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS IN SUPPORT OF PETITIONERS

The National Council of Agricultural Employers (NCAE) respectfully submits this brief *amicus curiae*.[1] Letters of consent from all parties have been filed with the Clerk of this Court. This brief supports the petition for a writ of certiorari.

INTEREST OF THE *AMICUS CURIAE*

NCAE is a national association based in Washington, D.C. that represents growers and agricultural organizations on agricultural labor and employment issues. NCAE's membership includes agricultural employers with operations in all 50 states who hire about 75 percent of the national agricultural workforce. Its members include farm cooperatives, growers, packers, processors and agricultural associations.

NCAE's experience representing agricultural employers gives the organization the appropriate background to provide meaningful comments and insight into issues concerning worker and management relations in the agricultural industry.

Many NCAE members are growers of agricultural products who use independent contractors, commonly known as farm labor contractors (FLC's), to provide farm workers to harvest their crops. NCAE's members are subject to the provisions of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 *et seq.* (1998 & Supp. 1999) (MSPA) and the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (1998 & Supp. 1999) (FLSA), and, specifically, the rules govern-

[1] Counsel for the *amicus curiae* authored the brief in its entirety. No person or entity other than the *amicus*, its members or its counsel made a monetary contribution to the preparation or submission of the brief.

ing "joint employment" under MSPA. The decision below misapplies the law governing "joint employment" of workers by an FLC and an agricultural grower. Thus, the issues presented in the petition are extremely important to NCAE's members.

The Eleventh Circuit's decision significantly and directly impacts NCAE members who utilize and rely on farm labor contractors. It will impede the use of FLC's which will hurt agricultural growers and the agricultural industry, as well as farm workers throughout the United States. Small agricultural employers who constitute a significant part of the agricultural industry in this country will be especially affected by such strict liability standards. NCAE seeks interpretation and application of the "joint employer" rules in a way that not only furthers the purposes of MSPA but also provides stability to the agricultural labor market in the United States.

STATEMENT OF THE CASE

In 1990, the Burtons and Little Rock Produce Company entered into a joint venture to harvest crops. Pet. App. at 2a. The Burtons were responsible for obtaining labor for the bean crop. Pet. App. at 3a. The Georgia Department of Labor referred the Burtons to Wilner Luxama, a farm labor contractor. Pet. App. at 3a. The Burtons retained the services of Luxama to provide farm labor for the bean crop. Pet. App. at 3a.

Luxama recruited a crew of workers from Miami to pick crops in Georgia, including at the Burtons' farm. Pet. App. at 3a. Upon arriving in Georgia, Luxama assisted his workers in finding housing, which was located fifty miles from the Burtons' farm. Pet. App. at 3a, 34a. Luxama's duties included transporting the crew from their housing to the Burtons' farm each day and back. Pet. App. at 3a. Each day, Luxama assigned the workers their tasks and duties, determined how the crop should be picked, and directed and supervised the harvesting and

picking of beans. Pet. App. at 3a, 11a, 13a, 34a, 35a, 44a, 46a. Luxama decided when the picking should begin each day and controlled how many hours each worker would work. Pet. App. at 12a, 46a. Luxama also was solely responsible for determining whether to discipline any workers. Pet. App. at 12a. At the end of the day, Luxama weighed each of the boxes of beans and then his crew loaded the boxes on a trailer, which was owned by the packing house. Pet. App. at 4a. Luxama was solely responsible for deciding the workers' pay rate, and when and how to pay the workers. Pet. App. at 3a, 14a. Luxama decided to pay his workers based on the number of boxes they filled with beans. Pet. App. at 3a. The boxes were provided by the packing house. Pet. App. at 3a. Some days, Luxama would send his workers to pick crops at other farms and, on other days, some workers chose to stay at home. Pet. App. at 16a, 17a.

After planting and fertilizing the bean crop, the Burtons' activities were limited to paying Luxama a flat rate per box of beans, directing Luxama to the field to be picked each day, observing the progress of the harvest two or three times a day, and transporting the packing house's trailer to the packing house after it was loaded. Pet. App. at 3a, 4a, 14a. The Burtons did not have the ability to hire or fire the workers, did not determine the workers' pay rate, and did not prepare payroll records, pay FICA taxes or provide workers' compensation insurance. Pet. App. at 20a, 47a.

In 1991, Luxama's farm labor contractor registration lapsed. Pet. App. at 4a. On June 3, 1992, while Luxama was not registered, one of the trucks Luxama used to transport the farm workers between their housing and the Burtons' farm overturned. Pet. App. at 4a, 5a. As a result of the accident and injuries suffered, the plaintiffs commenced this law suit against the Burtons alleging violations of MSPA and FLSA. Pet. App. at 5a.

impacting American agricultural operations. *See Parker v. Flook*, 437 U.S. 584, 587-88 (1978) (certiorari granted because of the "importance of the question" and the "debilitating effect" the lower decision may have "on the rapidly expanding computer 'software' industry"). Moreover, NCAE submits that the Court should address the issue of imposing a strict liability joint employment standard on agricultural growers at its infancy prior to the Eleventh Circuit's approach being adopted by other federal courts considering similar joint employment cases. *See, American Fed'n of Musicians v. Wittstein*, 379 U.S. 171, 175 (1964) ("question being an important one of first impression under the [statute], we granted certiorari").

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD REVIEW THE DECISION OF THE COURT BELOW WHICH IMPROPERLY ESTABLISHED A *DE FACTO* STRICT LIABILITY STANDARD TO IMPOSE JOINT EMPLOYER LIABILITY ON GROWERS WHO UTILIZE FARM LABOR CONTRACTORS.

A. DOL's Joint Employer Regulation Issued Contemporaneously With MSPA Did Not Impose a Strict Liability Standard.

The Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 *et seq.*, (MSPA) was enacted in 1983, in part with the intent to more effectively regulate the conduct of farm labor contractors (FLC's). It replaced its predecessor statute, the Farm Labor Contractor Registration Act. Pub. L. No. 88-582, 78 Stat. 920 (1963) (repealed 1983). FLC's play an important role in supplying workers to growers during peak production and harvest periods. While FLC's often hold themselves out as independent contractors to growers who pay a fee for their services, and as the employer of the workers they supply, MSPA's incorporation of the joint employment principle from the Fair Labor Standards Act

(FLSA), 1982 U.S.C.C.A.N. 4552-3; 29 C.F.R. § 500.20 (h)(5)(ii), sought to go beyond labels and evaluate the nature of the FLC-grower relationship. The economic dependence of the workers upon the FLC and/or grower is a fundamental concept in such an analysis. Such an evaluation involves the application of the regulatory factors established in U.S. Department of Labor (DOL) regulation to all the facts, and the determination of whether joint employer status exists depends upon the totality of the circumstances in the case. If, after evaluating all the facts in the case in light of the regulatory factors, the grower and FLC are found to be joint employers of the workers, both parties are liable for any damages resultant from the FLC's failure to comply with MSPA or FLSA.

Under the original DOL joint employment regulation issued in 1983, the regulatory factors were applied to determine whether a joint employment relationship existed and often led to different outcomes. *Compare, Aimable v. Long and Scott Farms*, 20 F.3d 434 (11th Cir. 1994) (grower was found not to be the joint employer of the workers with the FLC) and *Antenor v. D & S Farms*, 88 F.3d 925 (11th Cir. 1996) (growers were found to be the joint employers with the FLC).

The original DOL regulation set forth five significant factors, albeit not exclusive, for courts to consider in evaluating potential joint employment situations.[3] In 1997, the Department of Labor revised these rules that govern the theory of joint employment under MSPA.

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[3] The original DOL regulations, which were applied by the district court in this case, included the following factors: (1) the nature and degree of control of the workers; (2) the degree of supervision, direct or indirect, of the work; (3) the power to determine the pay rates or the methods of payment of the workers; (4) the right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; and (5) preparation of payroll and the payment of wages. 29 C.F.R. § 500.20(h)(4) (1996).

B. The Eleventh Circuit Court of Appeals' Application of the 1997 Joint Employer Regulation Demonstrates That It is a *De Facto* Strict Liability Standard.

The 1997 revised regulation, which the Eleventh Circuit applied retroactively, set forth seven non-exclusive factors that should be considered by courts to determine whether the workers are considered to be "economically dependent" on the growers and, hence, joint employees of the grower and FLC. The seven factors are as follows:

A. Whether the agricultural employer/association has the power, either alone or through control of the farm labor contractor to direct, control, or supervise the worker(s) or the work performed (*such control may be either direct or indirect, taking into account the nature of the work performed and a reasonable degree of contract performance oversight* and coordination with third parties);

B. Whether the agricultural employer/association has the power, either alone or in addition to another employer, *directly or indirectly*, to hire or fire, modify the employment conditions, or determine the pay rates or the methods of wage payment for the worker(s);

C. The degree of permanency and duration of the relationship of the parties, in the context of the agricultural activity at issue;

D. The extent to which the services rendered by the worker(s) are repetitive, rote tasks requiring skills which are acquired with relatively little training;

E. Whether the activities performed by the worker(s) are an integral part of the overall business operation of the agricultural employer/association;

F. Whether the work is performed on the agricultural employer/association's premises, rather

than on premises owned or controlled by another business entity; and

G. Whether the agricultural employer/association undertakes responsibilities in relation to the worker(s) which are commonly performed by employers, such as preparing and/or making payroll records, preparing and/or issuing pay checks, paying FICA taxes, providing workers' compensation insurance, providing field sanitation facilities, housing or transportation, or providing tools and equipment or materials required for the job (taking into account the amount of the investment).

29 C.F.R. § 500.20(h)(5)(iv) (1998) (emphasis added).

The Eleventh Circuit interpreted the revised Department of Labor "joint employment" regulation to hold that the growers were joint employers with the FLC of the migrant contract workers.[4] The Eleventh Circuit's interpretation of the regulation and, specifically, several of these factors, creates a virtual strict liability situation for any grower who hires an FLC who violates the FLSA and/or MSPA.[5]

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[4] The joint employment regulation applied by the Eleventh Circuit was the revised regulation that was not effective until April 11, 1997. The Eleventh Circuit applied the revised regulation, not the original regulation, despite the fact that the district court had applied the original regulation in its analysis of the case. In addition, the revised regulation was not in effect when the growers entered into the contractual relationship with the FLC, at the time of the underlying motor vehicle accident, the date on which this action was commenced by plaintiffs, or the date on which the district court issued its decision.

[5] NCAE was concerned that DOL's proposed revision of its joint employment regulation would create a strict liability standard. In NCAE's comments to the Department of Labor in 1996 during the rulemaking period, it submitted:

> . . . a likely effect of the proposed rule will be to shift liability to agricultural employers who now invariably will be held li-

Of the seven new regulatory factors set forth above and applied by the Eleventh Circuit to reverse the district court, factors identified as D, E, and F, above, almost invariably are found to occur in agricultural employment, hence evidencing a joint employment relationship. Farm production and harvest tasks are typically repetitive tasks, with the level of skill required of harvest tasks typically not requiring extensive training (Factor D).[6] Farm work, such as production and harvesting, is usually integral to the farm owners overall operation (Factor E).[7] Farm work also is typically performed on a farm (Factor F). Predictably, these factors were found by the Eleventh Circuit to evidence joint employment in the instant case.

Thus, the critical factual determinations in a joint employment analysis that can have different outcomes center on factors identified as A, B, C and G, above. Pay practices vary greatly in grower-FLC relationships. Luxama, the FLC, paid the workers. The Eleventh Circuit, there-

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able under what is tantamount to a strict liability standard for the actions of FLC's they use.

In response, in the final rule, the Department of Labor stated that the regulation was not to be construed as imposing a strict liability standard. *See*, 62 Fed. Reg. 11738 (1997). Notwithstanding DOL's position, the Eleventh Circuit's decision in this case confirms the fears expressed in NCAE's comments. Furthermore, Professor Michael H. LeRoy insightfully commented on *Charles v. Burton* following the district court decision in this case but prior to the Eleventh Circuit's decision. *See*, Petitioner at 22 (quote taken from Michael H. LeRoy, *Farm Labor Contractors and Agricultural Producers as Joint Employers Under the Migrant and Seasonal Agricultural Worker Protection Act: An Empirical Public Policy Analysis*, 19 Berkeley J. Employment & Lab. L. 175, 213 (1998)).

[6] Eleventh Circuit Court Judge Roney, in his dissent, referenced an earlier Eleventh Circuit case on joint employment, *Aimable v. Long and Scott*, 20 F.3d 434 (11th Cir. 1994), to support his position that the degree of skill necessary to perform the job is irrelevant to the issue of joint employment. Pet. App. at 31a.

[7] The Eleventh Circuit made this finding despite evidence that the bean harvest was only a "small percentage" of the Burtons' overall farming operation. Pet. App. at 18a.

fore, correctly found Factor G not to support a finding of economic dependence upon the growers.

Factor C requires an analysis of the permanency and duration of the relationship between the workers, FLC and growers. This factor also varies greatly. In the instant case, the Eleventh Circuit found that there was not sufficient permanency and duration to the relationship between the petitioners and the workers or Luxama, the FLC, to find that there was economic dependence.

Thus, the outcome of this case depended on the analysis of Factors A and B.

C. The Eleventh Circuit's Analysis of the Growers' Power to Control, Supervise and Modify the Employment Conditions of the Workers Found The Most Minimal Contact To Evidence Economic Dependence, Thereby, Imposing a *De Facto* Strict Liability Standard.

The Eleventh Circuit's application of Factors A and B, reflects a *de facto* strict liability standard. Factor A considers whether the growers had the power to direct, control or supervise the workers, *directly or indirectly*. The Eleventh Circuit concluded that a sufficient showing was made to establish that the growers controlled the workers and directly or indirectly supervised them so as to suggest evidence of joint employment. The facts relied upon by the Eleventh Circuit to reach this conclusion reflect the absolute minimal amount of direct or indirect control and supervision of farm workers that could occur in a grower-farm labor contractor relationship without the grower relinquishing its fundamental non-labor related business management decisions to an FLC. 29 C.F.R. § 500.20 (h)(5)(iv)(A) (1998); 62 Fed. Reg. 11740 (1997).

The only factor the court found to show that the petitioners exhibited some control is that they "determined the particular fields that they wanted the appellants to cultivate, determined when the appellants would begin

picking each field and supplied appellants with boxes that Little Rock provided." Pet. App. at 12a.[8]

Similarly, in finding that the growers exercised supervision over the farm workers, the Eleventh Circuit found economic dependence simply because the petitioners told the FLC which areas of the farm to harvest and monitored the farms several times a day. Without citing any direct contact or supervision of the workers, the Eleventh Circuit concluded that the mere "monitoring" of the fields and crops they owned, and conversing with the FLC, without considering the content of such conversation, constituted supervision. The logical extension of this conclusion is that a person who enters into a contract for services cannot oversee the performance of those services on his/her property nor communicate with the party with whom the contract was entered. Such a result ignores the reality of the market place and even the provisions of DOL's regulation that allow growers to conduct such basic commercial practices without thereby acquiring joint employer status. The regulation specifically provides that a "reasonable degree of contract performance oversight" needs to be taken into account when evaluating this factor. 29 C.F.R. § 500.20(h)(5)(iv)(A) (1998); *see also*, 62 Fed. Reg. 11739-1740 (1997). DOL stated in the publication of the final joint employer rule in 1997 as follows:

> The agricultural employer/association may certainly take action during or after the conclusion of the work to confirm satisfaction of the contract's ultimate performance standards (including appearing in the field and communicating with the FLC about

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[8] This very concept of control as evidence of economic dependence was rejected by the Eleventh Circuit in *Aimable v. Long and Scott Farms*, 20 F.3d 434, 440 (11th Cir. 1994), which held that determining the amount of crop to harvest, which parcels of land to harvest, when to begin harvesting and how frequently the fields should be harvested did not constitute economic dependence for purposes of determining joint employment. *Id.*

> general observations concerning the performance of the contract standards, such as ripeness or size of the produce harvested) without this action alone being considered an indicum of joint employment.

62 Fed. Reg. 11740 (1997).

Factor B, above, examines whether the petitioners had the direct or indirect power to hire, fire, or modify the employment conditions or determine the pay rates or the methods of wage payment for the farm workers. Finding no direct evidence that the petitioners exercised power over the workers with respect to hiring, firing and modification of employment conditions, pay rates and methods of payment, the Eleventh Circuit nevertheless concluded, similar to its analysis of Factor A, above, that by deciding when, where and how long to pick a crop, economic dependence on the growers was established.[9] Again, the Eleventh Circuit sought indirect means of tracing an owner's management decisions that inherently contain market and non-labor management components into a labor-management issue that affects joint employment status.[10]

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[9] Inconsistent with this analysis in the instant case, the Eleventh Circuit's earlier *Long and Scott* decision held that while the grower's "planting decisions" (including how much to plant, which fields to harvest, frequency of harvests, and decisions regarding tilling, fertilization and irrigation) may have "indirectly" affected employment, the affect was "neither direct nor substantial." *Aimable v. Long and Scott Farms*, 20 F.3d 434, 441 (11th Cir. 1994). The Eleventh Circuit in *Long and Scott* held that control is found when the growers "go beyond general instructions . . . to assign specific tasks, to assign specific workers, or to take an overly active role in the oversight of the work." *Id.* None of these facts appear in the record of this case.

[10] By using the term "indirect" in both Factors A and B, DOL's revised regulation allows a court to conclude that workers are economically dependent upon a grower in every case by seeking to find a cause and effect between each grower management decision and the effect of the decision on the amount of work or income it provides a worker. Such an approach, of course, makes a joint

The Eleventh Circuit's application of Factors A and B, the only factors that can determine the outcome of these cases, will always result in a finding of joint employment. In finding economic dependence in Factors A and B where the relationship between growers and the FLC was as removed as is practically possible, the Eleventh Circuit has retroactively applied a strict liability standard in reversing the district court.

D. The Eleventh Circuit's Analysis Requires Growers to Relinquish Fundamental Rights of Farmers to Farm Labor Contractors to Avoid Joint Employer Liability.

The decision of the Eleventh Circuit would require, as a practical matter, that growers relinquish their rights as owners, such as the right to choose whether to pick certain quantities of a crop at a certain location on a given day. In almost all aspects of labor-intensive agriculture in which NCAE members participate, such decisions are based on fundamental non-labor related factors, such as the market price of a crop. In most instances, growers will not pick a crop if they will lose money in doing so.

The effect of the Eleventh Circuit decision is to set an unprecedented condition that growers must relinquish traditional ownership and marketing rights to an FLC before they can establish an independent contractor relationship. Based on the conclusion of the Eleventh Circuit in this case, failure of the grower to abdicate such rights deprives the grower of the right to maintain an independent labor contractor relationship and invariably will result in joint employment liability. In effect, it leads to a strict liability standard under the new DOL regulation. Such a result is contrary to the intent of MSPA and FLSA, where joint employment was not a foregone conclusion

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employment analysis a mere formality since it predetermines economic dependence and, thus, joint employment.

but intended to be based on a factual determination by considering the total circumstances of a case.

Ironically, while the Eleventh Circuit's decision, in essence, requires growers to turn over fundamental ownership decisions to FLC's, this is inconsistent with DOL's regulations which carefully define and describe the duties of FLC's. A "farm labor contractor" is defined by DOL's regulations under MSPA as follows:

> . . . any person—other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association—who, for any money or other valuable consideration paid or promised to be paid, performs any farm labor contracting activity.

29 C.F.R. § 500.20(j) (1998).

The DOL regulations then define "farm labor contracting activity" to mean "recruiting, soliciting, hiring, employing, furnishing, or transporting any migrant or seasonal agricultural worker." 29 C.F.R. § 500.20(i) (1998). The DOL regulations are very clear to identify the narrow type of labor-related activities that FLC's perform. Yet, the Eleventh Circuit's decision implicitly expanded upon that definition by requiring growers to relinquish to FLC's their ownership duties, such as choosing whether to pick certain quantities of a crop at a certain location, determining which areas of the farm to harvest, and monitoring the farm during the day.

In finding economic dependence in Factors A and B where the relationship between the growers and the FLC's was as removed as is practically possible in almost all farming operations, the Eleventh Circuit ignores the practical reality of farm management practices. The result is that in every case where joint employment is at issue, Factors A and B are predetermined to a finding of joint employment.

II. THE ELEVENTH CIRCUIT'S DECISION ADOPTING A *DE FACTO* STRICT LIABILITY INTERPRETATION OF JOINT EMPLOYMENT IS INCONSISTENT WITH THE INTENT AND LEGISLATIVE HISTORY OF MSPA.

The Eleventh Circuit's *de facto* strict liability interpretation of the Department of Labor's joint employer regulation is improper in light of the intent and legislative history of MSPA. To determine joint employment under MSPA, Congress intended that the test set forth in *Hodgson v. Griffin and Brand, Inc.*, 471 F.2d 235 (5th Cir. 1973), be controlling.[11] Migrant and Seasonal Agricultural Worker Protection Act, P.L. 97-470, 1982 U.S.C.C.A.N. (96 Stat.) 4547, 4553. Following this direction from Congress, DOL issued its original regulation to evaluate joint employment.[12] DOL's revised 1997 regulation, as applied by the Eleventh Circuit creating a strict liability standard, goes well beyond the test intended by Congress.

Further evidence that Congress did not intend to create a strict liability standard in lieu of a factually based joint employment test as originally issued by DOL is illustrated by efforts to subsequently amend MSPA to include a strict liability standard. In 1993, in the 103rd Congress, Representative George Miller (D-CA) introduced H.R. 1173 that would have amended MSPA to include a strict liability standard in lieu of the original regulatory-based joint employment determination. Under the proposal, fixed-situs employers would have been strictly liable for violations occurring on their property as a result of the

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[11] MSPA joint employer regulation is derived from the FLSA joint employment doctrine. 29 C.F.R. § 500.20(h)(5)(ii) (1998). Imposing a *de facto* strict liability joint employer standard on MSPA only, and not the FLSA, will single out agricultural employers for discriminatory treatment. *Compare* 29 C.F.R. §§ 791.1-791.2 (1998) (FLSA joint employer regulations).

[12] See footnote 3, *supra*.

acts or omissions of FLC's. Congress failed to enact that legislation.

During hearings conducted on H.R. 1173, Rep. Dooley voiced the practical concerns of NCAE members in his remarks concerning the proposal:

> I think a lot of us are very concerned about the pass-through of liability through the contractor. I think we have to be very concerned about the situation that we put a lot of private businesses in if they had to be fully responsible for the actions of a contractor which they have little oversight of. . . . [this legislation] unfairly burdens small farmers who must rely on farm contractors to provide labor on a short-term basis by making them liable for violations committed by the contractor. The bill would place these small farmers in financial jeopardy for actions beyond their control. While farm labor contractors should be held to the standard of law, it is clearly unfair to make small farmers responsible for violations committed by the contractor.

H.R. Rep. No. 103-29, at 42-44 (1993).

III. THE ELEVENTH CIRCUIT'S DECISION WILL DISCOURAGE FARM OWNERS FROM UTILIZING FARM LABOR CONTRACTORS AND WILL HAVE SERIOUS ADVERSE POLICY CONSEQUENCES ON THE AGRICULTURAL INDUSTRY IN THE UNITED STATES.

The Eleventh Circuit's decision will be detrimental to both the grower and the farm worker, both of whom benefit from the services of contractors. Growers will not enter into what have been previously independent contractor relationships, for which a joint employment determination was not predetermined, and accept strict liability for the acts or omissions of an FLC about which they had no knowledge or control. This could have a staggering impact and adverse consequences on the agricultural industry in our country and will impede the effective allocation of labor in American agriculture.

were livestock and poultry farms. Thus the potential financial exposure of growers who employ FLC's would be substantial, and would extend throughout the agricultural industry.

The Eleventh Circuit's application of the revised joint employer regulation in a manner tantamount to a strict liability standard "adds to a growing list of reasons for producers to curtail labor-intensive operations."[14] The economic consequences for the U.S. economy are substantial. This strict liability approach will only result in discouraging agricultural employers from using FLC's, thereby driving FLC's from the labor market and disrupting the agricultural labor supply.

CONCLUSION

For the foregoing reasons, the *amicus curiae* National Council of Agricultural Employers respectfully submits that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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[14] LeRoy, *supra*, at 182.